

BEFORE THE
GOVERNING BOARD OF THE
WOODLAND JOINT UNIFIED SCHOOL DISTRICT
YOLO COUNTY, STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SCOTT COPPENGER et al.,

Respondents.

OAH No. 2011030180

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Woodland, California, on April 21, 2011.

Terry Filliman, Attorney at Law, Atkinson, Adelson, Loya, Rudd & Romo, represented complainant Michael Stevens, Associate Superintendent, Woodland Joint Unified School District.

Peter M. McEntee, Attorney at Law, Beeson, Tayer & Bodine, APC, represented all respondents with the exception of Christina Lambie and Maxwell Shelnut, who were self-represented.

The record was left open until April 29, 2011, for submission of post-hearing briefs. The district's brief was received and marked as Exhibit 21. Respondent's brief was received and marked as Exhibit E. The record was closed and the matter was submitted for decision on April 29, 2011.

FACTUAL FINDINGS

1. Michael Stevens made and filed the Accusation in his official capacity as Associate Superintendent, Human Resources, Woodland Joint Unified School District.
2. Respondents Scott Coppenger, Monica Craggs, Angelica Farias, Karen Flory, Piper Guthrie, Christina Lambie, Lola Renda, David Scolari, Maxwell Shelnut, Samuel Solis, Shannon Torgeson, and Noel West are certificated employees of the district.
3. On March 1, 2011, the district's Board of Trustees adopted Resolution No. 26-11 reducing particular kinds of services and directing Superintendent Debra LaVoi, Ph.D., or her designee, to give appropriate notice to certificated employees whose positions will be affected by the action.

4. On March 11, 2011, Associate Superintendent Stevens gave written notice to certificated employees, including respondents, of the recommendation that their services would not be required or would be reduced for the 2011-2012 school year. Each notice set forth the reasons for the recommendation.

5. Twenty certificated employees filed a timely request for hearing to determine if there is cause for reducing or terminating their services for the 2011-2012 school year.

6. An accusation was served on respondents. All respondents, with the exception of one, timely filed a notice of defense. The district does not raise any challenge with respect to any respondent appearing in this hearing. All prehearing jurisdictional requirements were met as to each of these respondents.

7. The district has since withdrawn the accusations it issued against the following certificated employees: Tara Althausen, Helen Campen, Marisol Clark, Veronica Davalos, Neluka DeSilva, Lisa Gaskill, Elizabeth Lorda, and Julianne Lohr Shelton. The services of these employees are being retained for the 2011-2012 school year.

8. In its resolution, the board took action to reduce or eliminate the following particular kinds of services for the 2011-12 school year:

<u>Services</u>	<u>FTE¹ Reduction</u>
A. <u>Elementary Instructional Services:</u>	
1. Grades K-6 Elementary Classroom Teachers	15.0
B. <u>Middle School Instructional Services (Grades 7-8):</u>	
1. Industrial Technology - Wood	0.2
2. Leadership	0.2
3. AVID	0.6
4. Art	0.8
5. Social Science (Spanish)	0.2
6. Computers	0.4
7. Social Science	1.0
8. Science	1.4
9. English	2.0
10. Math	1.0
11. Physical Education	<u>0.6</u>
Total:	8.4

¹ Full-time equivalent positions.

C. High School Instructional Services (Grades 9-12):

1.	Art	1.4
2.	Health	1.0
3.	Foreign Language (Spanish)	0.6
4.	Foreign Language (French)	0.6
5.	Technology 9	0.6
6.	Science – Bio	1.2
7.	Physical Science	0.2
8.	Social Science	1.0
9.	Physical Education	1.0
10.	Math	1.0
11.	English	3.0
12.	Agriculture	1.4
13.	Industrial Technology – Welding	0.2
14.	Industrial Technology – Auto	0.2
15.	Business	0.4
16.	Music	<u>0.8</u>
Total:		14.6

D. Instructional Support Services:

1.	Counselors (Project AWARE)	3.0
2.	Counselors	5.0
3.	Counselor (Prairie El.) Cat. funds .5 & VP Alloc. .5	1.0
4.	Program Specialist	1.0

E. Administrative Services:

1.	Director, Student Services	1.0
2.	Coordinator, Academic Enrichment and Intervention	1.0
3.	Elementary Vice-Principal – Prairie Elem. (D.3 above	0.5)
4.	Elementary Vice-Principal – Tafoya Elem.	0.5
5.	Administrators on Special Assignments	2.0
6.	Secondary Vice-Principals - PHS	3.0
7.	Secondary Vice-Principals - WHS	3.0

Total: 58.5

9. Associate Superintendent Stevens described that his recommendation and the board's resolution were required by the district's budget situation. The district projects a \$3.9 million budgetary shortfall. The bulk of the district's budget is in personnel costs.

10. In determining which employees would receive a layoff notice, the district applied tie-breaking criteria for employees with the same first date of paid service. There are no issues with respect to the application of the criteria to respondents.

Piper Guthrie

11. The district also determined which senior employees were entitled to bump into positions held by junior teachers. In its resolution, the board adopted a number of competency criteria. One criterion provides:

A teacher with a multiple subject credential and a supplemental authorization authorizing instruction up to the ninth grade (e.g. Intro Math) may not bump to teach at the high school because of the limited ability to be assigned high school courses.

Based on this provision in the board's resolution, the district determined that respondent Guthrie was not entitled to bump into a position held by Kari Cramer, a teacher junior to her. Guthrie claims this determination was in error.

12. Respondent Guthrie is a permanent certificated employee with the district with a seniority date of August 22, 2005. She holds a Clear Multiple Subject Credential and a Supplemental Authorization in Business. Guthrie holds a full 1.0 FTE position teaching Computers at the middle school. With a Supplemental Authorization in Business, Guthrie may teach up to the ninth grade, only. She is not authorized to teach the tenth, eleventh or twelfth grades. As such, the only class Guthrie is authorized to teach at the high school level is Technology 9. Technology 9 is not being taught currently, and the service is being eliminated by the Board's resolution for the 2011-2012 school year, which reduces Technology 9 by 0.6 FTE.

13. The district proposes to layoff Guthrie a full 1.0 FTE. This is a result of the board's resolution, which reduced Middle School Instructional Services in Computers by 0.4 FTE, and a bump by a teacher senior to her, Sandra Calhoun, for the remaining 0.6 FTE of her position. (Calhoun's position is being eliminated under the board's resolution.)

14. Guthrie seeks to bump Kari Cramer. Cramer is a permanent certificated employee with a seniority date of January 17, 2007, which makes her junior to Guthrie. Cramer holds a Single Subject Credential in Business, and is assigned to Prairie High School. By virtue of this credential, Cramer may teach in all grades of high school, and may teach all classes offered at the high school level.

15. The board's bumping criterion set forth above does not allow for Guthrie to bump Cramer because Cramer holds a single subject credential and Guthrie holds only a supplemental authorization. A board possesses broad discretion in determining competency criteria. (Ed. Code, § 44955, subd. (b); *Duax v. Kern Community College District* (1987) 196 Cal.App.3d 555, 564-565.) The competency criterion at issue here is reasonable, and it

meets the board's stated purpose of allowing for maximum flexibility in high school assignments. Guthrie is not entitled to bump Cramer.

Post March 15 Retirement

16. The board's resolution reduces a total of nine FTE in counseling services. The district had four vacancies in counseling positions, and thus issued five layoff notices. (The district also issued a precautionary notice to Elaine Cummings, as discussed, *infra*.) The district took into consideration all positively assured attrition prior to issuing the preliminary notices to the counselors.

17. Since issuing the preliminary notices, the district has been advised that a high school counselor will be submitting to the board an application for an early retirement. An early retirement application must meet certain criteria and be approved by the board. The application will be an agenda item for the board's next meeting on April 28. Associate Superintendent Stevens does not know whether the board will accept the resignation. Associate Superintendent Stevens further suggested that even if the retirement is approved, the board may elect not to fill the vacancy created by the retirement as a means of salary savings.

18. Respondent counselors argue that the district must take this retirement into account when issuing its final notices. The case law is clear, however, that in a particular kinds of services layoff, the district is not required to consider attrition after March 15. (*San Jose Teachers Association v. Allen* (1983) 144 Cal.App.3d 327.) In short, the district may elect to consider the retirement when determining the number of counselors it will send final notices to, but it is not required to under the law.

Skiping of Counselor Elaine Cummings

19. Pursuant to Education Code section 44955, subdivision (d)(1), the governing board of the district resolved to deviate from terminating employees in the order of seniority, i.e., the board resolved to skip over a counselor within the district with particular qualifications and terminate more senior counselors who do not possess those qualifications. A district may skip a junior counselor only if the counselors with more seniority do not possess the special training and experience necessary to provide the service.

20. The board resolved as follows:

The Superintendent and/or his designee is authorized to deviate from terminating in order of seniority for teachers current assigned to the below listed programs based upon their unique training, qualifications and skills related to the required responsibilities for the course/job.

A. . . .

B. One counselor currently assigned to Cache Creek Continuation High School who, in addition to her counseling credential and experience in alternative programs including WASC Reviews, is being required to use her experience as a classroom teacher and additional Bilingual skills to serve an alternative school population with is 80% Hispanic (Elaine Cummings).

21. Associate Superintendent Stevens applied the skipping criteria and proposes to skip Elaine Cummings, who presently holds the counseling position at Cache Creek.² Cummings is a permanent employee with a seniority date of August 10, 2007.

22. Associate Superintendent Stevens noted that Cache Creek has a unique program in the district. Cache Creek has approximately 180 students, and is 80 percent Latino, with a large percentage of monolingual Spanish-speaking parents. Students are referred to Cache Creek from the district's comprehensive high schools because they are at risk of not graduating. The risk can be based on many reasons, including class credit deficiencies, drug or alcohol problems, truancy, emotional or social issues. The instructional program has less offerings. The instructional approach is different than in a traditional high school, and the teachers teach many subjects. There are 10 teachers at Cache Creek, a principal, and one counselor. In general, a counselor at a continuation high school is utilized differently than a counselor at a regular comprehensive high school. At a continuation high school the counseling is more intensive on social or emotional counseling, outreach, and in working with families.

23. Olga Nevez has been the principal of Cache Creek for 12 years. She was a Vice Principal at Woodland High School for six years, and worked as a high school counselor in a comprehensive high school in another district. Nevez testified that it is imperative for the school to have a bilingual counselor as the school has 71 students who are limited English speakers. The school needs a counselor who is bilingual in order to communicate with students and parents. (Cummings estimate that 50 percent of her parent contacts are in Spanish.)

Nevez believes that the counseling duties at Cache Creek are different than at a comprehensive high school in that 100 percent of the students are at risk for not graduating. Counselors at Cache Creek do a great deal more than what is listed in the job description. Cummings develops the master schedule for the school; she schedules each student's classes by hand (as there is no computer program for such scheduling); and she enters the data into the ARES systems upon completion of each course.

Cache Creek is accredited by the Western Association of Schools and Colleges (WASC). The last accreditation was in the 2009-2010 school year. The term of the

² The district did issue Ms. Cummings a precautionary March 15 notice.

accreditation is six years. Cummings had experience as a parent working on a WASC committee at her son's continuation high school before she was hired by the district. Since being at Cache Creek she has served on two evaluation teams for other alternative schools. Nevez has appointed Cummings to chair the school's team for the 2013 WASC revisit.

This year, Cummings obtained a 30-day emergency credential and has been assigned by Nevez to teach an elective credit class, Strategies for Success. Nevez approved Cummings to teach this class because she has had teaching experience under emergency teaching credential in the past.

24. Respondents David Scolari, Lola Renda, Angelica Farias and Samuel Solis are counselors in the district who are senior to Cummings. Each senior counselor is willing to be assigned to the continuation high school. Respondent David Scolari has been a counselor at Pioneer High School for seven years. He has a seniority date of October 25, 2004. Respondent Lola Renda has a seniority date of August 22, 2005. She spent four years as a counselor at Woodland High School. This year she has been assigned to five elementary schools. Respondent Angelica Maria Farias has been a counselor at Pioneer High School for five years. She has a seniority date of October 18, 2006. Respondent Samuel Solis has been a counselor at Pioneer High School for four years. He has a seniority date of August 1, 2007.

25. It is concluded that the district has failed to establish that Ms. Cummings has special training and experience necessary for the position the district has identified for skipping. The district has identified four criteria in support of skipping Ms. Cummings: bilingual ability; teaching experience; WASC experience; and experience with alternative education.

All counselors at the district are subject to the same job description, which does not require bilingual ability. When Cummings's position at Cache Creek was posted at the district, the announcement listed bilingual ability as a desirable qualification, it was not listed as a mandatory qualification. Moreover, even if this were a valid criterion, two of the more senior counselors (Farias and Solis) are bilingual.

The service being provided by Cummings under the PPS credential she holds is counseling. In order to skip a junior counselor pursuant to Education Code section 44955, subdivision (d)(1), the training and experience must relate to the credentialed service being provided. Ms. Cummings's teaching experience and her WASC experience do not relate to her PPS credential. As such, neither of these experiences can be relied on to deviate from seniority and skip Ms. Cummings.

There is no question that Cummings has had experience working with the at risk youth at Cache Creek. The district has not established, however, that the counselors more senior to her do not have equivalent training and experience. The high school counselors work with a large numbers of students who are at risk for not graduating, utilizing many community resources for referral for social and emotional programs, and utilizing many of the same alternative education resources. The counselors communicate regularly with

parents, both in English and in Spanish. They work on class scheduling, and they help develop a master schedule. Their experiences are not identical to those of Ms. Cummings, but it has not been demonstrated that they lack some special training or experience that Ms. Cummings possesses.

Other Matters

26. All contentions made by respondents not specifically addressed above are found to be without merit and are rejected.

27. With the exception noted above, no permanent or probationary employee with less seniority is being retained to render a service for which respondents are certificated and competent to render.

28. The cause for the layoff relates to the welfare of the schools and their pupils.

LEGAL CONCLUSIONS

1. Jurisdiction for this proceeding exists pursuant to Education Code sections 44949 and 44955, and all notices and other requirements of those sections have been provided as required.

2. Cause was established as required by Education Code section 44955 to reduce the number of certificated employees of the District due to the reduction of particular kinds of services.

3. Education Code section 44955, subdivision (d)(1), provides, in part, that a district may deviate from terminating employees according to seniority if the “district demonstrates a specific need for personnel . . . to provide services authorized by a services credential with a specialization in . . . pupil personnel services” and demonstrates that a junior “employee has special training and experience necessary . . . to provide those services, which others with more seniority do not possess.” By reason of the matters set forth in Findings 19 to 25, the district has not established cause to skip Elaine Cummings pursuant to Education Code section 44955, subdivision (d)(1). The district may not deviate from seniority with respect to Ms. Cummings in effectuating the reduction of counseling services.

4. Education Code section 44955, subdivision (b), provided that “Except as otherwise provided for by statute, the services of no permanent employee may be terminated under the provisions of this section while . . . any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.” The district shall follow the requirements of this section in issuing its final notices to effectuate the reduction in counseling services.

5. Cause exists because of the reduction of particular kinds of services pursuant to Education Code section 44955 to give notice to all respondents, except the most senior counselor, that their services will not be required for the 2011-2012 school year. The cause relates solely to the welfare of the schools and the pupils thereof within the meaning of Education Code section 44949.

RECOMMENDATION

Except as set forth above, notice may be given to respondents that their services will be reduced or eliminated for the 2011-2012 school year because of the reduction of particular kinds of services. The district shall follow the requirements of Education Code section 44955, subdivision (b), in issuing its final notices to effectuate all reductions in services.

DATED: May 4, 2011

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings